

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARPENTERS PENSION AND ANNUITY FUND	:	CIVIL ACTION
OF PHILADELPHIA AND VICINITY, et al	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
THOMAS H. JOHNSON	:	
	:	
Defendant	:	NO. 02-4547

**MOTION FOR JUDGMENT BY DEFAULT BY THE COURT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 55(b)(2)
AGAINST DEFENDANT THOMAS H. JOHNSON**

Plaintiffs, Carpenters Pension and Annuity Fund of Philadelphia and Vicinity, ("Pension Fund") and Edward Coryell ("Coryell" and together with Pension Fund "Plaintiffs") by their legal counsel, respectfully move this Court, pursuant to Fed. R. Civ. Pro. 55(b)(2) to enter default judgment in favor of the Fund and against Defendant Thomas H. Johnson ("Defendant") for the unpaid principal balance of a participant loan under provisions of the Pension Fund's plan of benefits plus late charges, interest and attorneys' fees and costs incurred by the Fund pursuant to 29 U.S.C. §1132(g).

The grounds for this Motion are as follows:

1. Prior to the commencement of this action, the Pension Fund attempted to resolve this dispute in an amicable manner.
2. The requested payments were not received and on or about July 9, 2002 the Complaint in this matter was filed. The Complaint was served on Defendant on July 27, 2002 as appears from the Return of Service filed with the Court.
3. No Answer to the Complaint was filed, and contemporaneously with this Motion

Plaintiffs have filed a Request to Clerk to Enter a Default pursuant to Fed.R.Civ. Pro 55(a) and mailed a copy, first class mail, postage prepaid, to the Defendant.

4. The Defendant is neither an infant nor incompetent person and is not in the military or naval service of the United States or its allies, or otherwise within the provisions of the Soldiers and Sailors Civil Relief Act of 1940 or its amendments.

WHEREFORE, Plaintiffs seek the following relief:

(a) Judgment entered as set out in the proposed Order and Judgment by Default attached to this Motion.

Respectfully submitted,

JENNINGS SIGMOND, P.C.

BY: s/Richard J. DeFortuna
RICHARD J. DEFORTUNA (ID. NO. 86260)
SANFORD G. ROSENTHAL (ID. NO. 38991)
The Penn Mutual Towers
510 Walnut Street, 16th Floor
Philadelphia, PA 19106
(215) 351-0660/0611

Attorneys for Plaintiffs

DATE: August 26, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARPENTERS PENSION AND ANNUITY FUND	:	CIVIL ACTION
OF PHILADELPHIA AND VICINITY, et al	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
THOMAS H. JOHNSON	:	
	:	
Defendant	:	NO. 02-4547

**DECLARATION OF AMOUNT DUE UPON
APPLICATION FOR DEFAULT**

Richard J. DeFortuna, Esquire, being duly sworn according to law, deposes and says that he is the attorney for the Plaintiffs in the above-entitled action; that he has read the Complaint filed in this action and knows the contents thereof, and the same is true and there is now due by Defendant Thomas H. Johnson, to Plaintiffs on the debt set forth in the Complaint, the sum of \$11,847.40 itemized as follows:

Principal Balance	\$10,133.63
Interest through August 31, 2002	786.01
Late fees through August 31, 2002	67.23
Attorneys' Fees and Costs	<u>860.53</u>
TOTAL	\$11,847.40

Defendant is in default for failure to appear in this action, and Defendant is not an

infant nor incompetent person and not in the military service, as appears in the attached Affidavit.

I declare under penalty of perjury in accordance with 28 U.S.C. §1746 that the foregoing is true and correct to the best of my knowledge, information and belief

s/ Richard J. DeFortuna

RICHARD J. DEFORTUNA, ESQUIRE

Executed On: August 26, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARPENTERS PENSION AND ANNUITY FUND	:	CIVIL ACTION
OF PHILADELPHIA AND VICINITY, et al	:	
	:	
Plaintiffs	:	
	:	
v.	:	
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THOMAS H. JOHNSON	:	
	:	
Defendant	:	NO. 02-4547

DECLARATION OF RICHARD J. DEFORTUNA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	SS
COUNTY OF PHILADELPHIA	:	

Richard J. DeFortuna, being duly sworn according to law, deposes and says that he is the attorney for the Plaintiffs herein; that he is authorized to take this Affidavit on behalf of the Plaintiffs; that Defendant owes to Plaintiffs the sum of \$11,847.40, representing the Principal Balance under the Note in the amount of \$10,133.63, interest in the amount of \$786.01, late charges in the amount of \$67.23, and attorneys' fees and costs in the amount of \$860.53; that an itemization of said counsel fees is attached as Exhibit 1; that said counsel fees represent a fair and reasonable charge for the service of affiant's law firm in connection with the collection of the unpaid debt in this matter and are customarily charged to other clients of the law firm in similar cases.

I declare under penalty of perjury in accordance with 28 U.S.C. §1746 that the foregoing is true and correct to the best of my knowledge, information and belief

Executed On: August 26, 2002

s/Richard J. DeFortuna
RICHARD J. DEFORTUNA, ESQUIRE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARPENTERS PENSION AND ANNUITY FUND	:	CIVIL ACTION
OF PHILADELPHIA AND VICINITY, et al	:	
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Plaintiffs	:	
	:	
v.	:	
	:	
THOMAS H. JOHNSON	:	
	:	
Defendant	:	NO. 02-4547

**DECLARATION OF FAILURE TO PLEAD OR
OTHERWISE DEFEND IN SUPPORT OF
APPLICATION FOR ENTRY OF JUDGMENT**

I, Richard J. DeFortuna, Esquire, being duly sworn according to law, deposes and says:

1. That he is the authorized agent of the Plaintiffs and the attorney of record, and has personal knowledge of the facts set forth in this Affidavit.
2. That examination of the Court files and records in this case shows that service of the within Complaint was made upon the Defendant on July 27, 2002.
3. That more than twenty (20) days have elapsed since the date on which the said service was made with a Summons and a copy of a Complaint, excluding the date thereof.
4. That the Defendant herein has failed to answer or otherwise defend as to Plaintiffs' Complaint, or serve a copy of any answer or other defense which it might have had.
5. That this Declaration is executed in accordance with Rule Nos. 55(a) and 55(b) of the Federal Rules of Civil Procedure for the purpose of enabling the Plaintiffs herein to obtain an entry of default judgment against Defendant herein, for its failure to answer or otherwise defend as to the Plaintiffs' Complaint.
6. That Defendant is not in the military or naval service of the United States or its allies, or

otherwise within the provisions of the Soldiers and Sailors Civil Relief Act of 1940 or its amendments is not an infant nor incompetent person.

I declare under penalty of perjury in accordance with 28 U.S.C. §1746 that the foregoing is true and correct to the best of my knowledge, information and belief

Executed On: August 26, 2002

s/ Richard J. DeFortuna

RICHARD J. DEFORTUNA, ESQUIRE

CERTIFICATE OF SERVICE

Richard J. DeFortuna, Esquire, deposes and says that he did cause to be mailed a true and correct copy of Plaintiffs' Motion for Default Judgment to the Defendant, by regular mail on the date set forth below as follows:

Thomas H. Johnson
3425 Sheffield Street
Philadelphia, PA 19136

s/ Richard J. DeFortuna
RICHARD J. DEFORTUNA, ESQUIRE

Date: August 26, 2002

THIS DOCUMENT HAS BEEN ELECTRONICALLY FILED AND IS AVAILABLE FOR VIEWING AND DOWNLOADING FROM THE ECF SYSTEM

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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OF PHILADELPHIA AND VICINITY, et al	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
THOMAS H. JOHNSON	:	
	:	
Defendant	:	NO. 02-4547

**ORDER AND JUDGMENT BY DEFAULT
AGAINST DEFENDANT THOMAS H. JOHNSON**

Upon consideration of the Complaint and Motion for Default Judgment of the Plaintiffs, Carpenters Pension and Annuity Fund of Philadelphia and Vicinity, ("Pension Fund") and Edward Coryell ("Coryell" and together with Pension Fund "Plaintiffs"), it appearing to the Court that Thomas H. Johnson ("Defendant") was served with process on July 27, 2002 and has inexcusably, knowingly and willfully failed to appear, plead or otherwise defend, and the default against said Defendant having been entered, it is ORDERED:

1. Judgment is entered against the Defendant in favor of the Plaintiffs for \$11,847.40 including the following:
 - (a) Principal balance of \$10,133.63 due and owing under the Note
 - (b) Interest through August 31, 2002 in the amount of \$786.01
 - (c) Late fees through March 31, 2002 in the amount of \$67.23
 - (d) Attorneys' fees and costs incurred by Plaintiffs through August 26, 2002 in the amount of \$860.53. Plaintiffs are awarded reimbursement of all additional attorneys' fees and costs they incur in the collection and enforcement of this judgment.

2. This Order and Judgment is enforceable, without duplication, by one or more of the Plaintiffs, jointly and severally, or their agents.

BY THE COURT

Dated: _____
Philadelphia, PA

WILLIAM H. YOHN, Jr. _____ J.

**CARPENTERS HEALTH AND WELFARE FUND OF PHILADELPHIA & VICINITY,
et al.**
v. THOMAS H. JOHNSON
CIVIL ACTION NO. 02-4547

SAGOT, JENNINGS & SIGMOND ATTORNEYS' FEES - AUGUST 2002

<u>Date</u>	<u>Attorney</u>	<u>Task</u>	<u>Time</u>
08/13/02	CTM	Preparation of Request to Enter Default	.7
08/20/02	CTM	Calculate Interest Due Calculate Late Fees Preparation of Motion for Default Judgment	2.3
08/22/02	CTM	Calculate Attorneys Fees Revisions to Motion for Entry of Default Judgment	.5
08/26/02	RJD	Review of Request to Enter Default Review of Motion for Default Judgment	.4
08/26/02	CTM	Preparation of Motion for Default Judgment for Electronic Court Filing	.6
		TOTAL HOURS	4.5

August Summary

CTM	4.1 Hrs x \$85 /per hour =	\$348.50
RJD	.4 Hrs x \$175 /per hour =	\$70.00

August Total	=	\$418.50
(6/07/02 to 7/31/02) Total	=	\$442.03

GRAND TOTAL	\$860.53
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